

# Dismissal of Inter-Time Member of Parliaments in the Principles of the People's Sovereignty and Democracy in Indonesia

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## Abstract

Mechanism and dismissal of Inter-Time Member of Parliaments are regulated in Law No. 17 of 2014 can be which is proposed by the head of her political party that is in Article 239 or by the Honorary Board of the Parliament are set to Presidential Decree. The election of a member of the House of Representatives actually puts sovereignty vested in the people. The existence of representative institutions in a democratic country is one of the pillars are very basic, because these institutions serve to represent *kepentingan*-interests of the people, to channel the aspirations of the people and accommodate these aspirations. Every political decision should be through a democratic and transparent process to uphold the sovereignty of the people.

**Keywords:** Dismissal of Inter-Time, Member of Parliaments, Democracy, Sovereignty

## I. Introduction

### A. Background

Article 1 (3) Constitution of Indonesia that "Indonesia is a State of Law", from the foregoing description asserts that "In a constitutional state requires normative and empirical recognition of the principle of the rule of law (netherland: *Rechtsstaat*), namely that all the problems solved by the law as the supreme guide". "One characteristic of a state of law, which in English is called Legal State or a state based on the rule of law, in Dutch and German called *rechtsstaat*, is characteristic of limitation of power in the organization of state power".

Implement the Constitution of Indonesia Years 1945 purely and consistently is a concept to uphold the constitutional order in the life of society, nation and state by joints democracy, the State based on law, and the general welfare according to basic social justice for all the people of Indonesia. Article 1 of Act of Republic of Indonesia No. 2 of 2012 on amendments to the Act of Republic of Indonesia No. 2 of 2008 on Political Parties states that "Political Party is an organization which is national and is formed by a group of Indonesian citizens voluntarily on an equal basis will and ideals to fight and defending the interests of members of political, community, nation and state, and to maintain the integrity of the Unitary Republic of Indonesia under Pancasila and the Constitution of the Republic of Indonesia Year 1945".

The weakness of political parties is a negative potential to inhibit the function of a political party that does not function as it should. A political party is a media aspirations for the public to participate in the decision-making process in the life of the state. "Parliament functioned as a forum for debate on various aspirations in order 'rule making' and 'public policy making' and 'executing public policy' ". "The existence of representative institutions in a country marking *dianutnya* representative system in the country". This implies that the developed democracies is indirect democracy. According Hartati states that:

Sovereignty is given by the people to the ruler, the orientation must be returned to the people. Namely the joint willingness of community members who delegate the performance of that sovereignty. Because the real sovereignty remains in the hands of the people, while the left is just execution only. (Hartati, 2008: 104-105)

The arrangement of the dismissal of members of Parliament provided for in Article 22-B of the Constitution of 1945 which states that "Members of the House of Representatives may be dismissed from office, the terms and of procedures stipulated in the legislation". To further set in the dismissal of interim contained in Article 239 of Act Republic of Indonesia Number 17 Year 2014 on the MPR, DPR, DPD and DPRD.

Dismissal is governed by the Article gives authority to the political party to dismiss members of the House, it is no clear measure could even subjectively mere based on like or dislike of the political parties or the arbitrariness of political parties to its members who become members Parliament is not in line with or disagree to convey or express the aspirations of their constituents or voters, the member of Parliament may be dismissed. Actually, "in the political culture of democracy is mature (mature), the political recruitment system (Poolitical toughest of recruits) democratic, and there is a real relationship between the representatives of the constituents, institutions recall is not necessary". (Bagir Manan, 2005 : 57)

Act of Republic of Indonesia No. 8 of 2012 on General Election of DPR, DPD and DPRD which determines the proportional election system and open with the most votes, should have the right to dismissal of the MPs were not entirely in the hands of political parties, but constituents also have the right to determine

whether members the political parties in the Stop feasible or not. The election of a legislator puts sovereignty truly belongs to the people in accordance with article 1, paragraph (2) of the 1945 Constitution states that "sovereignty is in the people and implemented according to the Constitution".

Moh. Hatta also once said: recall rights contrary to Pancasila democracy let alone democracy. The party leaders are not entitled to cancel its members as a result of the election. Apparently the fact that the party leadership was more powerful than their constituencies. If so he suggested that the abolished elections only. Basically, recall rights only exist in communist and fascist states are totalitarian. (Ni'matul Huda, 2011: 159 – 160)

While according to Hartati say: The concept of representative gave a theoretical description of the representatives and the represented. With such understanding, then between representatives and represented there is a relationship which can not be removed. The elected representatives in the state must decide all policies to accommodate and absorb the aspirations of those represented. (Hartati, 2008: 86)

That is, the political party one of its functions as a forum for political party members can be members of the legislature who had been elected in the general election to absorb, collect and channeling the political aspirations of the people who had elected in the general election.

### **B. Identification of Problem**

From the above background, the authors will limit the issues to be discussed in this paper are as follows:

1. Setting Intertemporal Dismissal Members of the House of Representatives According to Act of Republic of Indonesia No. 17 Year 2014 on the MPR, DPR, DPD and DPRD.
2. Dismissal of Members of Parliament Intertemporal No order is contradictory to the principle of People's Sovereignty and Democracy in Indonesia

## **II. Discuss**

### **A. Dismissal of Inter-Time Member of House of Representatives According to Act of Republic of Indonesia No 17 Years 2014 on MPR, DPR, DPD and DPRD**

Dismissal of Inter-Time Member of House of Representatives (hereinafter referred to as DPR) as referred to in Article 239 paragraph (1) letter a and b as well as in paragraph (2) c, d, g, and h is proposed by a political party leader to the leadership DPR with a copy to the president. Article 241 (1) states that: In terms of political party members dismissed by his political party as referred to in Article 239 paragraph (2) letter d and the corresponding appealed through the courts, lawful dismissal after a court ruling which has permanent legal power.

This means that interim dismissal against members of Parliament committed by political parties is not necessary investigation and verification by the Ethics Council and without any complaints, including complaints from voters. This gives extraordinary powers to the major political parties to dismiss their members who sit as members of Parliament can only be based on likes or dislikes or contrary to party policy. The problems that occur when in court, the judges considered this is an internal issue of the party that has been decided by the Party concerned internal court.

### **B. Dismissal of Inter-Time Member of House of Representatives (DPR) No order is contradictory to the principle of People's Sovereignty and Democracy in Indonesia**

"The existence of representative institutions of the people in a democracy is one of the pillars of that very tree, because these institutions serve to represent the interests of the people, the aspirations of the people and articulate these aspirations". "Legislature reflects one's bodily functions, namely legislation, or make laws". "Today the legislature in general represent the people through political party. This is called a representative that is political (political representation)". "Therefore, the DPR is formed in the center to criticize the central government, formed in the area to criticize the government, the provincial and district areas relevant level". (Inu Kencana and Azhari: 86)

DPR granted use rights as representatives of the people to determine their state life. In that connection, it is important to distinguish between sense "*representation in presence*" and "*representation in ideas*". (Jimly Asshidiqie, 2011: 165-166). The first is formal, is representation in terms of physical presence; While understanding that the second substantive representation, namely the representation on the basis of aspiration or idea.

Jimly Asshidiqie said "In a country that really adheres to the principle of popular sovereignty, the third division of the functions of government was not at all diminish the meaning that the real sovereign is the people. All the functions that government is subject to the will of the people or their representatives assembly". Among the functions of the legislature's most important is:

1. Determine *Policy* and making of Law.
2. Control the executive bodies in the sense of ensuring that all executive action in accordance with the policies that have been set (*Scrutiny, Oversight*). (Jimly Asshidiqie, 1994: 42).

A democratic political system is in the hands of the people's sovereignty, the high participation of the

people in political life, political parties aspirational and effective, quality elections. A democratic political system underpinned by a healthy political culture, namely sportsmanship and respect for diversity.

The imposition of the dismissal of members of Parliament in his tenure in the Act would preclude the existence of other considerations that are not based on law. The provision was also at the same show pahan consistency in applying the rule of law, namely that everyone is equal before the law, so that every citizen should be subject to the law. But in enforcing the law it must be done in a manner that is in accordance with the law. The question is, whether the dismissal of members of the House of Representatives proposed by political parties have been appropriate under the law.

Dismissal of intertemporal political party has raised a legal uncertainty on members of the House of Representatives. Party members who have been in the representative bodies like it or not have to follow the dictates of the chairman of the political party, resulting in the position of member of the representative body becomes very weak to perform its functions sebagai community representatives.

According to Bagir Manan said that:

*"recall* can be seen as an emergency regulation, it should be avoided because of the weaknesses and abuse of power. There are several possibilities for the democratic conduct a recall. First; this initiative of the party or the House of Representatives. If the initiative of the party, then it must be supported by a number of branches of the party including party officials constituent members concerned areas. If the initiative of the Parliament, must be proposed by a faction concerned. Iain way that the initiative came from the constituent members concerned. Constituent member electoral district concerned, with a certain amount could propose that the member concerned in the recall. Second; The above initiatives submitted to Parliament to be examined and decided upon". (Bagir Manan, 2001:58)

"DPR have a constitutional system maintenance functions include the authority maintaining the continuity of the constitutional system based on Pancasila and the 1945 Constitution; make the people feel represented by channeling their aspirations".(Paimin Napitupulu, 2007:31) Given freedom of every person to express an opinion, which means that members of Parliament should not be subservient to the interests of the party, because she represents the people in the decision-making mechanisms at both supra-structural and political infrastructure. "One other function that is no less important is that as a means of political recruitment. It is a training ground for young people to gain experience in the field of politics to the national level".

### III. Conclusion

1. Mechanisms and authority Inter-Time Member of House of Representatives (DPR) regulated in Act of Republic of Indonesia No 17 Year 2014, can be done through the political party leaders to the leadership of the House of Representatives with a copy to the president. In this case there is no room for the intervention of the President to dismiss the member of Parliament for authority stops there on political parties. If the President does not issue a Presidential Decree on pemberhentian, precisely the President acted in accordance with existing rules. Even if the President decides the opposite of what was decided political parties, then the President can be expected to intervene. If concerned appealed through the courts, lawful dismissal after a court ruling which has permanent legal power.
2. The election of a member of the House of Representatives put the sovereignty truly belongs to the people in accordance with Article 1 (2) of Constitution of Republic of Indonesia 1945, Not based on the interests of the political parties to members of the House of Representatives becomes stronger to perform its function as representatives of the people as well memelihara constitutional system that includes maintaining the continuity of constitutional authority based on Pancasila and Constitution of Republic of Indonesia 1945. The existence of representative institutions of the people in a democracy is one of the pillars of that very tree, because these institutions serve to represent kepentingan-interests of the people, the aspirations of the people and accommodate these aspirations. Every political decision should be through a transparent and democratic process by upholding the sovereignty of the people.

### IV. Recommendation

Based on the description above, the results of this paper can be put forward suggestions as follows:

1. Mechanisms and dismissal of inter-time authority DPR members proposed by political party leaders are not in accordance with Article 1 paragraph 2 of the 1945 Constitution. Therefore with it should be made legal reform by revising Article 239 of Law No. 17 of 2014 On MPR, DPR, DPD and DPRD.
2. Rights dismissal against members of the House of Representatives should not be entirely in the hands of political parties, it should be through the Honorary Board of the Parliament after the results of the investigation and verification as outlined in the decision Honorary Board of the House of Representatives based on the complaint of the leadership of the House, the public and the voters also have the right to determine whether the party members the politically feasible dismissed or not.

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